

**ASSEMBLY BILL**

**No. 520**

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**Introduced by Assembly Member Ammiano**

February 15, 2011

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An act to amend Section 1170 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 520, as introduced, Ammiano. Sentencing.

Existing law, operative January 1, 2012, provides that when a judgment of imprisonment is to be imposed and the statute specifies 3 possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. Existing law, operative January 1, 2012, provides that the court shall state the reasons for its sentence choice on the record at the time of sentencing.

This bill would additionally provide that the court may not impose an upper term based on aggravating facts unless the facts were first presented to the factfinder and the factfinder found the facts to be true. The bill would require the court to state the reasons for its sentence choice on the record at the time of sentencing, including the specific facts in aggravation, if any, the court relied upon to impose an upper term.

The bill would state findings and declarations of the Legislature in connection with imposing upper term sentences.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1170 of the Penal Code, as amended by Section 6 of Chapter 256 of the Statutes of 2010, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. *The Legislature further finds and declares that, to ensure proportionality in sentencing, upper terms should be reserved for individual cases in which aggravating facts exist and have been proven to be true.* The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In

1 sentencing the convicted person, the court shall apply the  
2 sentencing rules of the Judicial Council. The court, unless it  
3 determines that there are circumstances in mitigation of the  
4 punishment prescribed, shall also impose any other term that it is  
5 required by law to impose as an additional term. Nothing in this  
6 article shall affect any provision of law that imposes the death  
7 penalty, that authorizes or restricts the granting of probation or  
8 suspending the execution or imposition of sentence, or expressly  
9 provides for imprisonment in the state prison for life. In any case  
10 in which the amount of preimprisonment credit under Section  
11 2900.5 or any other provision of law is equal to or exceeds any  
12 sentence imposed pursuant to this chapter, the entire sentence shall  
13 be deemed to have been served and the defendant shall not be  
14 actually delivered to the custody of the secretary. The court shall  
15 advise the defendant that he or she shall serve a period of parole  
16 and order the defendant to report to the parole office closest to the  
17 defendant's last legal residence, unless the in-custody credits equal  
18 the total sentence, including both confinement time and the period  
19 of parole. The sentence shall be deemed a separate prior prison  
20 term under Section 667.5, and a copy of the judgment and other  
21 necessary documentation shall be forwarded to the secretary.

22 (b) When a judgment of imprisonment is to be imposed and the  
23 statute specifies three possible terms, the court shall order  
24 imposition of the middle term, unless there are circumstances in  
25 aggravation or mitigation of the crime. At least four days prior to  
26 the time set for imposition of judgment, either party or the victim,  
27 or the family of the victim if the victim is deceased, may submit  
28 a statement in aggravation or mitigation to dispute facts in the  
29 record or the probation officer's report, or to present additional  
30 facts. In determining whether there are circumstances that justify  
31 imposition of the upper or lower term, the court may consider the  
32 record in the case, the probation officer's report, other reports,  
33 including reports received pursuant to Section 1203.03, and  
34 statements in aggravation or mitigation submitted by the  
35 prosecution, the defendant, or the victim, or the family of the victim  
36 if the victim is deceased, and any further evidence introduced at  
37 the sentencing hearing. The court shall set forth on the record the  
38 facts and reasons for imposing the upper or lower term. The court  
39 may not impose an upper term by using the fact of any  
40 enhancement upon which sentence is imposed under any provision

1 of law. *Additionally, the court may not impose an upper term based*  
2 *on aggravating facts unless the facts were first presented to the*  
3 *factfinder and the factfinder found the facts to be true.* A term of  
4 imprisonment shall not be specified if imposition of sentence is  
5 suspended.

6 (c) The court shall state the reasons for its sentence choice on  
7 the record at the time of sentencing, *including the specific facts in*  
8 *aggravation, if any, the court relied upon to impose an upper term.*  
9 The court shall also inform the defendant that as part of the  
10 sentence after expiration of the term he or she may be on parole  
11 for a period as provided in Section 3000.

12 (d) When a defendant subject to this section or subdivision (b)  
13 of Section 1168 has been sentenced to be imprisoned in the state  
14 prison and has been committed to the custody of the secretary, the  
15 court may, within 120 days of the date of commitment on its own  
16 motion, or at any time upon the recommendation of the secretary  
17 or the Board of Parole Hearings, recall the sentence and  
18 commitment previously ordered and resentence the defendant in  
19 the same manner as if he or she had not previously been sentenced,  
20 provided the new sentence, if any, is no greater than the initial  
21 sentence. The resentence under this subdivision shall apply the  
22 sentencing rules of the Judicial Council so as to eliminate disparity  
23 of sentences and to promote uniformity of sentencing. Credit shall  
24 be given for time served.

25 (e) (1) Notwithstanding any other law and consistent with  
26 paragraph (1) of subdivision (a), if the secretary or the Board of  
27 Parole Hearings or both determine that a prisoner satisfies the  
28 criteria set forth in paragraph (2), the secretary or the board may  
29 recommend to the court that the prisoner's sentence be recalled.

30 (2) The court shall have the discretion to resentence or recall if  
31 the court finds that the facts described in subparagraphs (A) and  
32 (B) or subparagraphs (B) and (C) exist:

33 (A) The prisoner is terminally ill with an incurable condition  
34 caused by an illness or disease that would produce death within  
35 six months, as determined by a physician employed by the  
36 department.

37 (B) The conditions under which the prisoner would be released  
38 or receive treatment do not pose a threat to public safety.

39 (C) The prisoner is permanently medically incapacitated with  
40 a medical condition that renders him or her permanently unable

1 to perform activities of basic daily living, and results in the prisoner  
2 requiring 24-hour total care, including, but not limited to, coma,  
3 persistent vegetative state, brain death, ventilator-dependency, loss  
4 of control of muscular or neurological function, and that  
5 incapacitation did not exist at the time of the original sentencing.

6 The Board of Parole Hearings shall make findings pursuant to  
7 this subdivision before making a recommendation for resentence  
8 or recall to the court. This subdivision does not apply to a prisoner  
9 sentenced to death or a term of life without the possibility of parole.

10 (3) Within 10 days of receipt of a positive recommendation by  
11 the secretary or the board, the court shall hold a hearing to consider  
12 whether the prisoner's sentence should be recalled.

13 (4) Any physician employed by the department who determines  
14 that a prisoner has six months or less to live shall notify the chief  
15 medical officer of the prognosis. If the chief medical officer  
16 concurs with the prognosis, he or she shall notify the warden.  
17 Within 48 hours of receiving notification, the warden or the  
18 warden's representative shall notify the prisoner of the recall and  
19 resentencing procedures, and shall arrange for the prisoner to  
20 designate a family member or other outside agent to be notified  
21 as to the prisoner's medical condition and prognosis, and as to the  
22 recall and resentencing procedures. If the inmate is deemed  
23 mentally unfit, the warden or the warden's representative shall  
24 contact the inmate's emergency contact and provide the information  
25 described in paragraph (2).

26 (5) The warden or the warden's representative shall provide the  
27 prisoner and his or her family member, agent, or emergency  
28 contact, as described in paragraph (4), updated information  
29 throughout the recall and resentencing process with regard to the  
30 prisoner's medical condition and the status of the prisoner's recall  
31 and resentencing proceedings.

32 (6) Notwithstanding any other provisions of this section, the  
33 prisoner or his or her family member or designee may  
34 independently request consideration for recall and resentencing  
35 by contacting the chief medical officer at the prison or the  
36 secretary. Upon receipt of the request, the chief medical officer  
37 and the warden or the warden's representative shall follow the  
38 procedures described in paragraph (4). If the secretary determines  
39 that the prisoner satisfies the criteria set forth in paragraph (2), the  
40 secretary or board may recommend to the court that the prisoner's

1 sentence be recalled. The secretary shall submit a recommendation  
2 for release within 30 days in the case of inmates sentenced to  
3 determinate terms and, in the case of inmates sentenced to  
4 indeterminate terms, the secretary shall make a recommendation  
5 to the Board of Parole Hearings with respect to the inmates who  
6 have applied under this section. The board shall consider this  
7 information and make an independent judgment pursuant to  
8 paragraph (2) and make findings related thereto before rejecting  
9 the request or making a recommendation to the court. This action  
10 shall be taken at the next lawfully noticed board meeting.

11 (7) Any recommendation for recall submitted to the court by  
12 the secretary or the Board of Parole Hearings shall include one or  
13 more medical evaluations, a postrelease plan, and findings pursuant  
14 to paragraph (2).

15 (8) If possible, the matter shall be heard before the same judge  
16 of the court who sentenced the prisoner.

17 (9) If the court grants the recall and resentencing application,  
18 the prisoner shall be released by the department within 48 hours  
19 of receipt of the court's order, unless a longer time period is agreed  
20 to by the inmate. At the time of release, the warden or the warden's  
21 representative shall ensure that the prisoner has each of the  
22 following in his or her possession: a discharge medical summary,  
23 full medical records, state identification, parole medications, and  
24 all property belonging to the prisoner. After discharge, any  
25 additional records shall be sent to the prisoner's forwarding  
26 address.

27 (10) The secretary shall issue a directive to medical and  
28 correctional staff employed by the department that details the  
29 guidelines and procedures for initiating a recall and resentencing  
30 procedure. The directive shall clearly state that any prisoner who  
31 is given a prognosis of six months or less to live is eligible for  
32 recall and resentencing consideration, and that recall and  
33 resentencing procedures shall be initiated upon that prognosis.

34 (f) Any sentence imposed under this article shall be subject to  
35 the provisions of Sections 3000 and 3057 and any other applicable  
36 provisions of law.

37 (g) A sentence to state prison for a determinate term for which  
38 only one term is specified, is a sentence to state prison under this  
39 section.

- 1     (h) This section shall become operative on January 1, 2012.

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